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IN THE SUPREME COURT STATE OF ARIZONA

In the Matter of:)	Supreme Court No. R-18-0005
)	
PETITION TO AMEND RULE 123,)	COMMENT
RULES OF THE SUPREME)	
COURT OF ARIZONA; RULES 19,)	
47, 75, & 86, RULES OF)	
PROCEDURE FOR THE)	
JUVENILE COURT)	
_____)	

David K. Byers, Administrative Director, Administrative Office of the Courts (AOC), respectfully submits this comment to inform the Court of the position of the AOC and the Juvenile Records Access Workgroup¹ regarding the proposed changes to rules concerning juvenile court records as set forth in Supreme Court Rule Petition R18-0005.

The workgroup met on August 23, 2018 and September 12, 2018, to discuss alternative language for the proposed rules, with the primary purpose of clearly delineating which record requests the clerk could address and which record requests

¹ The workgroup was created by David K. Byers consistent with this court's order in R 18-0005 to "convene a workgroup of interested stakeholders to further consider the matter."

required judicial review. The workgroup consisted of a broad range of stakeholders including representatives from the bench, court administration, the clerk's office, probation, prosecutor's office, parent's counsel, and judicial branch counsel. The workgroup invited representatives from the Arizona Department of Child Safety and the Arizona Department of Juvenile Corrections to the second meeting to elaborate upon the types of records they need in their work to serve a public purpose.

The workgroup agreed upon the edits to Rule 123, Rules of the Supreme Court, Rules 19, 47, 75, and 86, Rules of Procedure for the Juvenile Court, as presented in the attached Appendix.

Conclusion

For the reasons stated above, we respectfully request that the court adopt the version of the rules proposed in the attached Appendix.

Respectfully submitted this 27th day of September, 2018.

/s/
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APPENDIX

APPENDIX A: TEXT OF PROPOSED RULE CHANGES

RULES OF THE SUPREME COURT OF ARIZONA

Rule 123. Access to the Judicial Records of the State of Arizona

(a) – (c) [No changes]

(d) Access to Case Records. All case records are open to the public except as may be closed by law, or as provided in this rule. Upon closing any record the court shall state the reason for the action, including a reference to any statute, case, rule or administrative order relied upon.

(1) *Juvenile Delinquency Proceedings Records.*

(A) All Records of all juvenile delinquency and incorrigibility, emancipation, and guardianship under ARS Title 14 proceedings are open to the public to the extent provided for in the Rules of Procedure for the Juvenile Court, the Arizona Rules of Probate Procedure, or by law.

(B) All records of proceedings under Rule 47.3, Rules of Procedure for the Juvenile Court, dependency, guardianship under ARS § 8-871 through 8-874, termination of parental rights, adoption, and other related proceedings are confidential and must be withheld from public inspection unless authorized by law, rule, or court order. ~~Records of all juvenile adoption, dependency, severance and other related proceedings are closed to the public as provided by law unless opened by court order.~~

(C) All information and records obtained in the course of evaluation, examination or treatment of juveniles who have been referred to a treatment program funded by the juvenile probation fund (pursuant to ARS § 8-321) or the family counseling fund (ARS § 8-261 et seq.) are confidential and ~~shall not be released~~ must be withheld from public inspection unless authorized by law, rule or court order. These records include, but are not limited to, clinical records, medical reports, laboratory statements and reports, or any report relating to diagnostic findings and treatment of juveniles, or any information by which the juvenile or ~~his~~ the juvenile's family may be identified, wherever such records are maintained by the court.

(2) – (5) [No changes]

(e) – (f) [No changes]

(g) Remote Electronic Access to Case Records.

(1) A court may provide remote electronic access to case records as follows:

(A) Parties, Attorneys, and Arbitrators. Parties, attorneys, and arbitrators may be provided remote electronic access, upon registering, to case records that are not sealed in all case types in which the person is an attorney of record, arbitrator, or named party, including an individual, partnership, corporation, association, or public or private organization. An attorney of record on the staff of a public or private law firm may extend access to any other attorney or person working for or on behalf of that public or private law firm, upon the other attorney's or person's registration.

(B) Members of the State Bar of Arizona. In addition to access provided by paragraph (g)(1)(A), attorneys who are active members of the State Bar of Arizona may be provided remote electronic access to all case records that are not sealed or confidential by law, as authorized by the Arizona Code of Judicial Administration (ACJA).

(C) Governmental Entities and Private Organizations Serving a Public Purpose. Any federal, state, tribal or local governmental entity or private organization serving a public purpose may be provided remote electronic access to any case records necessary to carry out a particular governmental or public purpose responsibility. The terms of such access shall be set forth in a memorandum of understanding between the entity or organization and the custodian that includes provisions for safeguarding the confidentiality of any closed records. The director of the Administrative Office of the Courts may enter into a memorandum of understanding with a governmental entity as authorized by the ACJA.

(D) General Public, Registered Users.

(i) Members of the public may be provided remote electronic access pursuant to ACJA § 1-604 to all of the following categories of case records unless sealed or otherwise made confidential by rule or law:

(a) Civil case records in any action brought to enforce, redress, or protect a private or civil right but not:

- Juvenile ~~dependency and delinquency or other~~ matters brought under ARS Title 8;
- Family law, paternity, or other matters arising out of ARS Title 25;
- Orders of protection, injunctions against harassment and all proceedings, judgments or decrees related to the establishment, modification or enforcement of such orders, including contempt; or
- Probate proceedings brought under ARS Titles 14 and 36.

(b) Civil traffic case records in any action brought as such under ARS Titles 28 or 41 or a matter expressly designated as a civil traffic violation by a traffic ordinance of a city or town, and any boating violation punishable by a civil sanction under ARS Title 5, chapter 3, articles 1 through 11, or a non-traffic ordinance expressly designated a civil violation or a boating ordinance by a city or town.

(c) Criminal case records in any action instituted by the government to punish offenses classified as a misdemeanor or felony brought pursuant to ARS Titles 4, 13, 28, or local ordinance and case records in any action instituted to punish petty offenses classified by ARS § 13-601.

(d) Case records in any action instituted by a county to enforce an ordinance that provides for criminal and civil penalties pursuant to ARS §§ 11-251 and 11-808.

(to end) [**No changes**]

RULES OF PROCEDURE FOR THE JUVENILE COURT

Rule 19. Records and Proceedings

A. Contents of Juvenile Court Files.

1. *Legal File.* The legal file of the juvenile court shall consist of all pleadings, motions, minute entries, orders, or other documents as provided by rule or ordered by the court. Within the legal file, the clerk shall file and segregate confidential documents, including any information and documents from the social file submitted to the court as provided in Rule 30(A). In addition, the court may close all or part of the legal file upon a finding of a need to protect the welfare of the victim or another person or a clear public interest in confidentiality. With the exception of the portions of the file ~~marked~~ identified as confidential by law, rule, or court order, or ordered closed by the judge, the legal file shall be open to public inspection without order of the court. The court shall state its reasons for withholding the legal file, or portions thereof, from public inspection.

2. *Social File.* The social file shall be maintained by the probation department and may consist of all social records, including diagnostic evaluations, psychiatric and psychological reports, treatment records, medical reports, social studies, Department of Child Safety records, police reports, disposition reports, detention records, and records and reports or work product of the probation department. The social file of the juvenile shall be confidential and withheld from public inspection except upon order of the court.

B. Proceedings. Delinquency, incorrigibility, diversion involving delinquent acts and transfer proceedings shall be open to the public, except upon the court's written finding of a need to protect the best interests of a victim, the juvenile, a witness, the state, or a clear public interest in confidentiality.

1. *Request to Close Hearing.* Any person requesting that a hearing or portion thereof be closed to the public shall give notice of such request to the parties, or to any other person designated by the court, which may include one or more media representatives. The court shall hold a hearing, prior to the proceeding, to determine whether the proceeding should be closed and shall consider the positions of the parties. In determining whether to close a hearing or any portion thereof, the judge may consider any relevant factors, including the likelihood that an open hearing may:

- a. Be emotionally harmful to a participant, or

- b. Inhibit testimony or the disclosure or discussion of information material to the truth-finding or rehabilitation process, or
- c. Otherwise interfere with the emotional well-being of the victim.

C. Release of Juvenile Court Files

1. Release to Juvenile Probation Departments. In addition to records open to public inspection, the juvenile court may release all records in its possession to a juvenile probation department when necessary for supervision of a juvenile.
2. Release to Federal Authorities. Upon request of the United States Attorney's Office, the juvenile court shall promptly release to that office for presentment to a federal magistrate judge any records concerning a juvenile who is arrested for a criminal offense, pursuant to 18 U.S.C. § 5032.

RULES OF PROCEDURE FOR THE JUVENILE COURT

Rule 47. Release of Information

A. Records confidential generally. All records pertaining to of proceedings under Rule 47.3, Rules of Procedure for the Juvenile Court and of dependency, guardianship under ARS § 8-871 through 8-874, termination of parental rights, and other related proceedings shall be maintained as are confidential and shall must be withheld from public inspection except upon order of the court or as otherwise provided by law, unless authorized by law, rule, or court order.

1. Inspect without court order. A parent, petitioner, or when named as a party, a court-appointed legal guardian or the department of child safety, may inspect and copy case records while that individual remains a party to the case. On appeal, a party may inspect and copy records created prior to the ruling upon which the appeal is taken. The following other individuals and entities are authorized to inspect and copy case records without review by the court:

a. A current party's attorney of record, and current guardian ad litem.

b. Arizona judicial officers, clerks, administrators, professionals or other staff employed by or working under the supervision of the court, including staff of the administrative office of the courts, dependent children's services division, for the local foster care review boards, shall have such access as needed to carry out their assigned duties.

c. Court Appointed Special Advocates pursuant to A.R.S. § 8-522(F).

d. A designated member or staff of the Arizona Commission on Judicial Conduct performing duties under commission rules.

e. A court-appointed legal guardian not a party to the case may obtain a certified copy of the guardian's appointment order on request during the term of the guardian's appointment.

f. A designee of the Department of Juvenile Corrections shall have such access as needed to carry out their assigned duties for any individual who is subject to a commitment order.

2. Access by court order. The following individuals and entities must obtain a court order prior to inspecting the case record.

- a. An individual who was the subject of a dependency, a guardianship under A.R.S. §§ 8-871 through 8-874, or a termination of parental rights action as a minor.
- b. An individual who is not qualified under A(1) or whose parental rights were terminated or who was dismissed from the case.
- c. A designee of the Department of Child Safety when the Department is not a party in the case upon a showing that inspection is required to carry out the Department's responsibilities.
- d. A foster parent to inspect and copy records other than records a foster parent is authorized to inspect under A.R.S. § 8-514(D)(5).
- e. Any individuals and entities not otherwise authorized by this rule to inspect records.

B. Any person may file a request with the court to inspect court records in a case involving child abuse, abandonment or neglect that has resulted in a fatality or near fatality. In ruling on this request, the court shall consider:

- 1. Whether doing so is in the child's best interests.
- 2. Whether inspection of records would endanger the child's physical or emotional well-being or the safety of another person.
- 3. The privacy rights of the child, the child's siblings, parents, guardians and caregivers and any other person whose privacy rights the court determines need protection.
- 4. Whether all parties have agreed to allow the inspection.
- 5. If the child is at least twelve years of age and a party to the proceeding, the child's wishes.
- 6. Whether inspection of records could cause specific material harm to a criminal investigation.

C. If the court grants the request for inspection of court records, the court shall redact any information subject to the requirements of A.R.S. § 8-525(B)(1) through (6) and A.R.S. § 8-807.01(A)(1).

RULES OF PROCEDURE FOR THE JUVENILE COURT

Rule 75. Release of Information

All adoption records ~~pertaining to adoption proceedings shall be maintained as~~ are confidential and shall be withheld from public inspection ~~except upon order of the court or as otherwise provided by law~~ unless authorized by law, rule, court order, or as provided by the procedures in Rule 86.

RULES OF PROCEDURE FOR THE JUVENILE COURT

Rule 86. Adoption Records

A. Request for Records. Unless otherwise provided by law, ~~all requests for information concerning adoption records will be made in writing and filed with the clerk of the court~~ individuals must file a request with the presiding judge of the juvenile court or the presiding judge of the juvenile court's designee to inspect adoption records. ~~The~~ Requests will set forth must state the information being sought and why the requestor needs the information is needed by the requestor. The court ~~will not~~ may release identifying information about the adoptee or birth parent when:

1. in the absence of The file contains a notarized statement ~~authorizing release, granting consent under A.R.S. § 8-121(E), or;~~
2. unless The requestor establishes a compelling need for disclosure.

B. Records of Indian Adoption. Under 25 U.S.C. § 1917, Upon application a request filed with the court by an Indian individual who has reached the age of eighteen (18) and who was the subject of an adoptive placement, the court which that entered the final adoption decree shall must inform the individual of the tribal affiliation, if any, of the individual's biological parents and provide such other information as may be necessary to protect any rights flowing from the individual's tribal relationship. If the biological parent executed a notarized statement requesting anonymity, information pertaining to the biological parent shall be redacted prior to release.